SUPREME COURT OF THE UNITED STATES.

No. 423.

RUFUS CASS, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Commonwealth of Massachusetts, plaintiff, and Rufus Cass, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Rufus Cass, as by his complaint appears: We, being that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of November next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-five.

JOHN G. STETSON,
Clerk pro tem. of the Circuit Court of the United States, Mass. Dist.

Writ issued July 31st, 1866.

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

2 I, Charles N. Richardson, make oath and say: that on the first day of August, A. D. 1866, at ten o'clock in the forenoon, I filed a true and attested copy of the within writ, attested by the clerk of the circuit court within named, in the clerk's office of the

superior court within and for the county of Middlesex, and Commonwealth of Massachusetts.

CHARLES N. RICHARDSON.

SUFFOLK, *ss:*

Aug. 1, 1866, subscribed and sworn to before me—

A. FITZ NORRIS,
Justice of the Peace.

MIDDLESEX, *ss:*

OFFICE OF THE CLERK OF THE SUPERIOR COURT FOR SAID COUNTY.

I hereby certify that the copy mentioned in above affidavit was filed as therein stated.

JNO. JAS. SAWYER, *Ass't Clerk.*

3 The United States of America to the Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein Rufus Cass is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan Clifford, justice of the Supreme Court of the United States, this 31st day of July, in the year of our Lord one thousand eight hundred and sixty-six.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

I hereby acknowledge that service of the within citation has been duly made upon me.

CHESTER J. REED,
Att'y Gen'l.

4 UNITED STATES OF AMERICA,
Circuit Court of the United States,
District of Massachusetts, ss:

To the honorable the circuit court of the United States:

Your petitioner, Rufus Cass, of Charlestown, in the county of Middlesex, in the district of Massachusetts, shows unto your honors that heretofore, to wit: on the fourth Monday of June, A. D. 1866, at Concord, in the said county of Middlesex, in the district of Massachusetts, upon an indictment in which the Commonwealth of Massachusetts was plaintiff, and your petitioner was defendant, final judgment was rendered against your petitioner in the superior court within and for the county of Middlesex, in said district, being the

highest court of law or equity of the said State in which a decision could be had in said suit, as appears by the records of said superior court he reto annexed, and made part of this petition. And your petitioner says that in the trial of said case there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; and wherein was drawn in question the validity of a statute of, and authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, and laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution, and of a treaty and statute of, and commission held under, the United States, and the decision was against the title, right, privilege, and exemption specially set up and claimed under such clause of the said Constitution, treaty, statute and commission, and a manifest error hath happened to the great damage of your petitioner.

Wherefore your petitioner prays that a writ of error to the Supreme Court of the United States may issue in due form of law, and he will ever pray, &c.

RUFUS CASS,
By his attorneys, RICHARDSON & NORRIS.

5 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

At the superior court begun and holden at Lowell, within and for the county of Middlesex, on the third Monday of October, being the fifteenth day of said month, anno Domini 1866:

The jurors for the Commonwealth of Massachusetts on their oath present that Rufus Cass, late resident of Charlestown, in the county of Middlesex, and Commonwealth aforesaid, at said Charlestown, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-five, and at said Charlestown, from said last-mentioned day to the day of finding this indictment, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, was then and there a common seller of intoxicating liquors, against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided. And the jurors aforesaid on their oath aforesaid do further present, that Rufus Cass, late resident of Charlestown, in the county of Middlesex, and Commonwealth aforesaid, on the tenth day of Oc-

6 tober, in the of our Lord one thousand eight hundred and sixty-five, at said Charlestown, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, did then and there sell to a certain person, whose name is Daniel Toomey, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor, against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided. The indictment was found at the term of this court held at Cambridge, in said county, on the second Monday of February last, when and where the said Rufus Cass was arraigned and had the indictment read to him, and standing mute, the

court ordered the plea of not guilty to be entered. A jury was thereupon empannelled and sworn to try the issue, viz: Charles Howe, foreman, appointed by the court, and fellows, to wit: Adam Hemanway, Joseph R. Knight, William B. Learned, Anton Moeldner, Asahel D. Puffer, George S. Pendergast, Jesse B. Ruideort, Joseph Roberts, Stephen Stiles, Ezra Robinson, and Lawson Valentine, who after hearing all matters and things concerning the same, returned
their verdict therein, and upon their oath said that the said
7 Rufus Cass was guilty; whereupon the attorney for the Commonwealth in this behalf said he would no further prosecute the second count in this indictment; and thence said indictment was continued to the then next term of this court, held at Concord on the fourth Monday of June last, when and where the defendant, "after verdict against him, and before sentence, comes and moves this honorable court that judgment be arrested in this case, because he says that he is a retail dealer in spirituous liquors, in the Commonwealth of Massachusetts, and as such is now engaged in business, and for that purpose, and as such retail dealer in spirituous and intoxicating liquors, he had, at the time and times mentioned in said indictment, and at all other times, full, complete, and perfect authority and license from the United States of America to do all the acts complained of in said indictment, which license was granted him under and by virtue of an act of Congress, and for which he paid, according to the laws of the United States, into the treasury of the United States, the full sum of twenty-five dollars, which license gave him full power
and authority to do all the acts in said indictment charged
8 against him, and that he has actually paid in money a tariff or revenue duty and tax upon the same spirituous and intoxicating liquors to the government of the United States, for the keeping and selling of which he is complained of in said indictment, which duty, tariff, or tax was paid upon the said spirituous and intoxicating liquors in the same packages, and in the same form and quantity in which he sold the same, as charged in said indictment, and in no other form, or package, or quantity, and that he has done no other act, or sold any other spirituous or intoxicating liquors than such as he has paid a duty or tax upon to the government of the United States as aforesaid; and it is nowhere alleged in said indictment that the defendant had not, at the time and times mentioned in said indictment, authority or license from the United States of America to do the acts complained on in said indictment, nor is it anywhere alleged in said indictment that the defendant had not paid to the government of the United States a tariff or revenue duty, or tax upon the same spirituous and intoxicating liquors in the same packages, and in the same form and quantity in which he sold
them, for the keeping and selling of which he is complained of
9 in said indictment, and because the said cause has been removed to the circuit court of the United States within and for the district of Massachusetts;" which said motion in arrest was overruled, and the defendant feeling aggrieved thereat alleged exceptions thereto, which, being reduced to writing, and presented to the

court, were allowed, signed by the presiding judge, and filed in the case; and the same being deemed by the court to be frivolous, sentence was passed notwithstanding the allowance thereof. It was, therefore, considered by the court on the twenty-third day of July last, that the said Rufus Cass pay a fine of fifty dollars and costs of prosecution, and stand committed until such fine and costs be paid; and be imprisoned at hard labor in the house of correction in said county for the term of three months, and recognize in the sum of one thousand dollars not within one year from the time of conviction upon this indictment, to violate any provision of chapter eighty-six of the General Statutes, or any law of this Commonwealth relating to the sale of spirituous and intoxicating liquors, and stand committed until he enter into such recognizance. And thence the indictment was continued for the opinion of the supreme judicial court upon the exceptions filed as aforesaid to this time, and now a rescript from said supreme judicial court is filed in the case, to wit, "exceptions overruled."

In testimony that the foregoing is a true copy of record, I hereto set my hand and affix the seal of said superior court, on this thirteenth day of December, A. D. 1866.

[SEAL.] JNO. JES. SAWYER,
Ass't Clerk.